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**BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION SECURITY AND
INFRASTRUCTURE PROTECTION
OF THE COMMITTEE ON HOMELAND SECURITY**

**HEARING ON PROTECTING THE MASS TRANSIT CRITICAL INFRASTRUCTURE
IN NEW YORK CITY AND IN THE NATION**

APRIL 25, 2008

The Transport Workers Union of America, AFL-CIO (TWU) on behalf of its 130,000 members in the transportation industry, including airline workers, railroad workers on Amtrak, rail freight lines and Metro North and transit workers in numerous American cities including Philadelphia, Miami, Houston, and San Francisco as well as the MTA workers in New York City, appreciates the opportunity to appear before this Committee.

Before I speak to the security threats still facing the industry I would like to commend the Committee and its Chairman Bennie Thompson and Subcommittee Chairwoman, Sheila Jackson Lee for the exceptional steps you have already taken to improve transportation security in drafting and shepherding through to passage the 9/11 Security Bill. I think we can say without hyperbole that this bill comprises the strongest security measures ever passed into law for the protection of surface public transportation.

The 9/11 bill's mandatory security training for rail and transit workers; the security funding and the grants to implement this training reverses decades in which this critical component in transportation security has been ignored in favor of well-lobbied, expensive technology that never makes it out of beta testing.

The 9/11 bill further integrates frontline workers into the transportation security umbrella by providing strong whistleblower protection; a requirement that 13(c) transit labor protections be attached as a condition on all grant programs; and requiring an unprecedented degree of consultation and input from labor organizations representing these workers.

Implementation of the 9/11 Security Bill

At the same time as we praise the bill, and before I go on to a broader discussion of security needs in the industry, I would be remiss if I did not call attention to the woeful lack of implementation of the 9/11 security bill by the Executive Branch, especially those parts dealing with rail and transit security.

To date there has been no rule-making on the implementation of the mandatory security training of frontline workers. And, while there has been program guidance issued on the grant program, this guidance blatantly disregards the explicit language of the law requiring 13(c) transit labor protection and Davis-Bacon prevailing wage protection as a condition of all grant programs. The program guidance we have seen so far omits this requirement entirely.

Grant Program Compliance with 13 (c)

The requirement for continued 13(c) labor protections was designed by this Committee to make certain the grants were designed to implement genuine security improvements, not as a devious way to get around decades-old labor protections. This Committee, which was adamant about its inclusion in the legislation, understood that one does not get the wholehearted cooperation of frontline workers needed to make this program work, if one is undermining other protections they enjoy under their labor agreements.

Law and Order does not mean the “law” is whatever the Executive Branch “orders” it to be. We strongly solicit the Committee’s assistance in preventing the Executive Branch from ignoring legislated requirements they don’t happen to like -- 13(c) transit protections and Davis-Bacon in particular.

We are also deeply concerned that the grant program, which we support, is proceeding while the security training program stalls. It would be a great disservice to mass transportation if grants were awarded and spent on other matters before the vital security training of frontline workers even gets underway.

9/11 Security Bill Funding

And, before I leave the subject of the 9/11 Security Bill, let me make one more observation. Some people say that no legislative issue in Washington ever goes away. But, with the strong bipartisan agreement around the need to protect our transportation system from terrorism, one might have expected the 9/11 Security Bill to be the exception.

Unfortunately we see in the FY 2009 Budget submitted by the President that is not the case. The President appears quite willing to talk about improving security. However, his request for \$175 million for public transportation and rail security is 85% less than the \$1.2 billion promised when he signed the 9/11 Bill. It appears that the fight to implement this ground breaking legislation will have to be taken into the budget battle. I want to underscore our willingness to work with the Committee to assure full funding for this important measure.

Transit and Rail Security

It will come as no surprise to anyone, least of all this Committee, that aviation security has received the lion’s share of attention and funding. Nor can the explanation lie solely with the horrific attack of 9/11. Even after the terrible attack on the Spanish railroad demonstrated the vulnerability of other forms of public transportation, transit and rail remain far more open to such attacks than does air travel.

Part of the explanation is undoubtedly that airplanes are easier to secure. Unlike transit, for example, passengers do not get on and off airplanes in mid-trip. Hopefully. Air travel lends itself to secure and sterile perimeters.

But the fact that transit and rail travel is difficult to secure, and that it may never be as secure as air travel, does not explain the minimal, and in some cases nonexistent, efforts to improve security for transit and rail passengers.

I believe part of the explanation lies in the culture of Washington. We take more seriously those matters that receive the most attention. Much of that attention is lobbyist-driven. And the degree to which lobbyists call attention to an issue is largely driven by the degree to which it offers U.S. corporations opportunities to profit.

Securing airline perimeters lends itself to expensive hi-tech solutions – various screening and detection devices, biometric identification, etc. It's a small wonder that a Beltway cottage industry has grown up pushing for adoption and purchase of these technologies.

Mass transit security, however, by its nature is more likely to be low-tech, as the Committee recognized when it mandated security training for frontline workers. More needs to be done in this area, as I will discuss below.

Frontline Workers: the Key to Rail and Transit Security

One country that has struggled for years with domestic terrorism is Israel. While their domestic air transportation system consists of only a few flights a day and cannot be compared to ours, they do have an extensive bus system.

In seeing what we could learn from their experience, the TWU was struck by the observation of an Israeli security expert that they relied most heavily on the eyes and ears of the workers on the scene. Israel has apparently developed a highly sophisticated training program to educate bus drivers and other employees on what to look for and how to deal with it as well as a rapid alert system that gets immediate response. In addition, I had the opportunity to lead a transportation delegation to London to visit their transit systems where again we observed, and discussed the benefits of having well manned facilities at the ticket booths and turnstiles. They have also added frontline workers to their automated light rail system. Like Israel the London for Transport (LFT) has taken advantage of adding more frontline workers for security, and passenger safety. Perhaps these are areas our Homeland Security Department might benefit from studying.

A great deal of attention has been given to the First Responders, those brave souls who are first on the scene of any attack. We need to pay as much attention to the "Pre-Responders," if I can coin a word – those people who are on the scene before an attack occurs and may be able to prevent it from even occurring.

I know I am preaching to the choir here – this Committee was first and foremost to recognize the importance of these frontline workers and to mandate their training in the 9/11 Bill.

But training is not the only issue here. There is the further issue of having sufficient workers on the spot to observe and react. This is obviously not an issue with a bus where 'one bus, one driver' assures there will be someone there. This is not always the case in other areas.

High-speed rail systems like those in New York, Philadelphia, Miami and other mass transit systems represented by the TWU are often the scenes of criminal attacks. Underground subway stations, in particular, seem to lend themselves to this as recent high-profile crimes in Philadelphia's SEPTA system and New York's MTA can attest. And wherever a criminal can strike, there is an opening for terrorism as well.

Cameras in stations are all very well. But a camera cannot evaluate what it sees. There is no substitute for station cashiers who can observe suspicious or hostile activity and report it. Furthermore, nothing so reassures passengers than the presence of a station employee keeping

them from being the only living, breathing human being in the station. Passengers themselves are more likely to report suspicious activity to a human presence than through some communication device that may or may not work.

What works against violent crime in these situations, generally works against terrorism -- the presence of eyes and ears, training to recognize situations and the ability of workers to react in a positive manner.

Yet many transit systems, driven by the same cost center/profit center mentality prevalent in the private sector, seem intent on replacing as many cashiers as possible with automatic, mechanical fare collection. "Collecting fares?" the argument goes -- "a machine can do it."

But this reductionism can prove lethal in a mass transportation setting. Ignoring or defining out of existence the security-related functions of rail and transit workers takes out of play our single best deterrent.

Rail: On-Board Service Workers

The single best example of this is the attempt to replace Amtrak's On-Board Service Workers with privately-contracted workers to dispense food and drink. Again the argument is made: "anyone can dispense food. They're just glorified McDonald's workers." Hardly.

On-Board Service Workers are currently required by Amtrak and by law to undergo extensive emergency preparedness training and to be prepared to assist in everything from emergency train evacuations to first aid, CPR and the use of the public address system during train emergencies.

Passenger trains, unlike McDonald's, travel throughout the country -- many times in locations where access to Emergency Medical Service personnel may be nearly impossible. On-Board Service Workers are trained as first responders to deal with everything from chemical, biologic or radiological attack to a simple nosebleed.

Over the years, in response to a variety of crises, the National Transportation Safety Board has suggested additional responsibilities to their assignment and recommended Amtrak's implementation, and training.

The record is replete with examples of On-Board Service Workers, members of TWU Local 1460, dealing with emergencies as varied as putting out fires, evacuating trains under bomb threats or after derailments, and providing first aid medical assistance to passengers until help arrived.

We have attached an appendix (Appendix A) outlining this record.

Nonetheless, Amtrak management is sorely tempted by its recurrent financial crisis to cut safety and security corners by replacing On-Board Service Workers with food dispensers. Again, I want to emphasize how short-sighted this would be and how much rail security depends on the

presence of these workers who not only see to passenger comfort in normal times but provide essential emergency assistance when things go wrong.

And unlike airlines where Federal Airline Regulations (FAR's) and Transportation Security Regulations (TSR's) have updated specific rules that apply to aircraft security, Federal Railroad Administration Regulations (FRAR's) and TSR's are behind the times in updating railroad security requirements. This should be addressed.

Securing Vehicles While Not-in-Service

The other great vulnerability of public transportation systems is through the vehicles themselves. We are familiar with the threat to airplanes while being repaired or stored and protect them with a layered series of perimeters, employee checks and screening systems, both human and biometric. In the aviation industry we recognize that, given sufficient time, a terrorist with access to an aircraft can find any number of places to securely hide explosives or other lethal devices.

Rail and transit vehicles offer no less of an opportunity for terrorism. The difference is that almost no effort is done to secure them from even casual attempts at access.

The Yards

Rail yards are where trains, subways and elevateds are stored when not in service. Whether Amtrak or mass transit, the security is generally the same – a wall, a fence, maybe a little barbed wire for appearances. But workers have to get in or out. There are gates and doors, but rarely with the kind of security protections common where aircraft are stored. Rare is the rail yard where access is limited to those with an electronic swipe card much less anything more sophisticated. Nor are there sufficient guards, cameras, etc. to prevent anyone from leaping a fence to gain access.

Maintenance Shops and Bus Garages

Maintenance shops are better secured than the yards. But not so secure that stranger's can't wander in off the streets and walk off with expensive tools, a frequent complaint. There are often locked doors. But that is irrelevant when the openings for buses and trains to enter and leave the shops are generally kept wide open.

In the case of bus garages where buses are constantly coming and going, it may be impractical to keep opening and closing the doors for each vehicle. Especially during load lines vehicle entrances and exits from bus garages must probably be secured by a guard checking IDs to allow access. But rail and transit maintenance shops and storage yards are susceptible to the same kinds of perimeter protections we apply to aircraft.

I strongly urge the Committee to look into implementing many of the procedures we use to secure aircraft with regard to rail and transit locations.

Subcontracting and Security Breaches

Further holes are blown in the security perimeter, such as it is, when Amtrak and transit agencies subcontract vehicle maintenance work.

At the MTA, for example, all employees undergo criminal background checks. There is no such requirement of contractors and subcontractors whose employees access thousands of security-sensitive areas of the system.

Then there is the problem of unidentified personnel wandering through the shop, moving vehicles, etc. Allow me to use the Beech Grove, Indiana, shop as an example (See attached letter of April 16, 2008 - Appendix B).

Amtrak, like many agencies, has an Employee Security Handbook that seems convincing on paper. The company's handbook requires, for example, that "Vendors and contractors must display their company identification and/or an Amtrak issued temporary identification while on company property" and that "Vendors must be escorted while entering restricted areas."

In the instance described in the attached letter, on April 16, 2008 two unidentified men walked into the shop and attempted to power up a railway car. They displayed no identification and at first refused to identify themselves. They were without the required escort. Then, after saying they worked for subcontractor Image Mark, but without producing any identification and without engaging in any of the basic safety procedures, they powered up the car.

Their ability to wander around the shop unescorted and actually access vehicles displays a gaping hole in security. This time they were subcontractors. Next time, who knows?

The letter indicates this is far from the first time there have been problems with unidentified people wandering around the shop unescorted. Worse yet, these cars are often removed from the property for painting and other similar work. From the point these cars leave Beech Grove until they return they are entirely open to anyone who wishes to access them for whatever purpose. At times they have sat outside the building at Indiana Rail for days at a time, not locked and with no security whatsoever at the facility (See attached letter of April 9, 2008 – Appendix C)

The Contradiction between Company Policies and Actual Practice

The Beech Grove, IN example is repeated endlessly across transit and rail properties. It illustrates one of the greatest difficulties in the Department of Homeland Security policing transportation security: there is often a world of difference between what companies *say* they are doing and what they *actually do*.

Rail and transit agencies have scores of lawyers who advise them on the publication of safety and security manuals. They may issue numerous memoranda detailing the policies to be observed.

But managers on the ground are driven by a different metric – get the work out! They are evaluated on how well they “make the line” (i.e. provide the requisite number of vehicles to fill the scheduled requirements on time). They are evaluated on the condition of the vehicles and the quality of the work.

They are not evaluated on adherence to security procedures until there is a breach with consequences. Workers and their elected union representatives have hands-on, knowledge of the actual security practices on-the-ground. They, unlike middle level managers who are responsible for implementing these procedures, have no self-interest in covering up failures to comply.

Yet the Transportation Security Administration evaluates rail and transit security on the basis of reports from top level management. This Committee wisely required worker input in the 9/11 Bill. We need to go further and require that any determination of actual security procedures in the industry include a survey of workers as well as management. And, further, that any discrepancies between the two accounts be addressed in face-to-face meetings as well as on-site evaluations.

MAJOR RECOMMENDATIONS

- 1) We encourage the Committee to exercise oversight of the implementation of the 9/11 Security Bill and make certain that all grant programs are conditioned on the application of 13(c) transit labor protections and Davis-Bacon prevailing wage protection.
- 2) Ensure that the training mandates included in the 9/11 bill are implemented in a timely manner and that front-line workers are directly involved in this process.
- 3) Work to secure full funding for the 9/11 Security Bill
- 4) The security and emergency preparedness duties of positions like cashier and on-board service workers should be enhanced not eliminated. We should attempt to increase, not reduce, the human presence in stations and on service vehicles. The committee should encourage the requisite (Transport Security Regulations) TSR's to be written and implemented.
- 5) As much as is practical, we should apply the lessons and practices of securing aircraft to securing not-in-service passenger rail and transit vehicles.
- 6) Any contracting out of passenger rail and transit maintenance work or service must include a requirement of full adherence to all the agencies' in-house security requirements.
- 7) Any TSA (Transport Security Administration) determination of actual security practices in mass transportation must include surveys and other input from frontline workers and their union representatives. Discrepancies between their reports and management's should be carefully investigated.